

Bond Case Briefs

Municipal Finance Law Since 1971

Highlights

- [What the Volcker Rule Means for the Municipal Market.](#)
- [12th Annual Tax & Securities Law Institute.](#)
- [Getting Creative on Public Workers' Health-Care Costs.](#)
- [District Court Rebukes IRS Church Plan Rulings.](#)
- [Market Groups Agree: Proposed Issue Price Rules Unworkable.](#)
- [NAIPFA Issues MA Rule Guide; GFOA to Offer Training.](#)
- [Banks to Revamp Leveraged Muni Funds After Volcker Curbs.](#)
- [Regulators' Proposal To Exclude Munis From HQLA Status To Dent Demand.](#)
- [*Orix Public Finance, LLC v. Lake County, Minn.*](#) - District Court invokes frustration of purpose doctrine to void BPA between county and bond purchaser after proposed issuance of matching fund revenue bonds is rendered moot when Rural Utilities Service states its intention to void the underlying deal if the bonds were issued.
- [*Espina v. Prince George's County*](#) - In a matter of first impression, appeals court holds that damages cap set forth in Local Government Tort Claims Act also applies to state constitutional tort claims, reducing \$11,505,000 million verdict against county to a downright affordable \$405,000.
- [*Rollins v. Dignity Health*](#) - District Court holds that the ERISA statute requires a church plan to have been established by a church, rather than merely requiring that a church plan be maintained by a tax-exempt organization controlled by or associated with a church.
- And finally, BCB is going to go out on a limb here and officially frown on the practice of killing mentally disturbed old men by repeatedly hitting them with the stun gun after they have already been subdued. But hat's off to you, Mr. Kenneth Chamberlain, Sr. for leaving us these immortal last words, [You can't hide from me. What I'm gonna do is give you a good ass wuppin ... Give you a good ... Well, I'll give you a good ass wuppin.](#)
- Happy New Year!

- Quick Program Note: We'll be taking next week off, but will wrap up the year with a double issue on 12/31. For you last-minute shoppers, please bear in mind that a subscription to Bond Case Briefs would make a truly terrible gift.
- [MSRB Enhances Protections for Investors Against Unexpected Changes to Bond Authorizing Documents.](#)
- [Volcker Rule Shift Lets Banks Continue Muni Bond Speculation.](#)
- [Moody's Reviews Tools and Tactics Available to Help Stressed Municipal Issuers.](#)
- [Congressman Asks SEC for MA Rule Clarification.](#)
- [Budget Agreement Would Hurt BABs.](#)
- [Detroit Bankruptcy Ruling Could Impact San Bernardino Mediation.](#)
- [GFOA Updates Municipal Advisor Rule Issue Brief.](#)
- [*U.S. v. Grimm*](#) - Court of Appeals overturns bid-rigging convictions, concluding that the statute of limitations for charging defendants with conspiracy began to run on the date bids were fixed, rather than on date periodic interest payments were made by institutions to issuers.

- [Goldman, Sachs & Co. v. North Carolina Mun. Power Agency No. One](#) - In ARS-related dispute, court concludes that broker-dealer agreement's forum selection clause of NY District Court precludes issuer's right to pursue FINRA arbitration; grants injunction prohibiting such arbitration.
- [Omnipoint Communications, Inc. v. City of Huntington Beach](#) - Court of Appeals holds that proposed ballot measure limiting city's ability to lease or sell city-owned property without voter approval - by requiring provider to obtain voter approval before constructing antennae on city-owned park property - was not preempted by Telecommunications Act.
- And finally, in a landmark ruling, the Supreme Judicial Court of Maine holds (admittedly *inter alia*) that [a 1978 Ford van in which dwelt a family of raccoons](#) did not qualify for state protection as an "antique vehicle;" raccoons to petition for cert.

- [Judge Blocks Auction-Rate Arbitration against Goldman.](#)
- [WSJ: Borrowing Maneuver Catches Flak.](#)
- [State Treasurer Cites Potential Adverse Effects of Proposed Regs on Arbitrage Restrictions.](#)
- [Bank of America Settles Municipal Bond Rigging Lawsuit.](#)
- [NYT: Pension Ruling in Detroit Echoes West to California.](#)
- [Fitch & Moody's U.S. Public Finance Teleconferences.](#)
- [NYT: Playing Pension Games.](#)
- [WSJ: Volcker Rule Could Raise Municipal Borrowing Costs, California Treasurer Says.](#)
- [Gulf Coast Housing Partnership, Inc. v. Bureau of Treasury of City of New Orleans](#), in which the court concluded that property owned by Louisiana LLC that is a wholly-owned affiliate of a Delaware nonprofit corporation exempt from paying federal tax is not exempt from paying local ad valorem taxes on that property.
- We reccomend that you schedule your next riot and/or affray in Arkansas, whose Supreme Court this week reached the obvious conclusion that \$25/month is thoroughly adequate compensation for constables tasked with "[suppressing all riots, affrays, fights, and unlawful assemblies](#); keeping the peace; and arresting offenders."
- And finally, BCB's euphemism of the month is brought to you by *Duffy v. Town of Berwick* in which we learn that the [toxic waste product generated by automobile recycling plants](#) is called "fluff." Adorable.

- [Expedia, Inc. v. City of New York Dept. of Finance](#) - Court upholds constitutionality of expansion of city's tax on hotel occupants to include fees earned by online travel companies.
- [Internatl. Bhd. of Elec. Workers Local Union No. 8 v. Bd. of Defiance Cty. Commrs.](#) - Appeals court concludes that federal funds were used in the construction of a public improvement and, therefore, the project was exempted from Ohio prevailing wage laws.
- [Hartney Fuel Oil Co. v. Hamer](#) - The Supreme Court of Illinois concludes that the "Jurisdictional Questions" regulations embodied in 86 Ill. Adm. Code 220.115, 270.115, and 320.115 which define situs for retail occupancy tax where purchase order acceptance occurs, with sale at retail and the purchaser taking delivery within the state, impermissibly narrowed the local ROT Acts, contrary to legislature's intention to allow local governments to collect taxes from retailers in their jurisdictions, and, thus, the regulations were invalid.
- [NYT: Detroit Is Ruled Eligible for Bankruptcy.](#)
- [Missouri Brings New Case Against Moberly Bond Underwriter.](#)

- [GASB Resolves Transition Issue in Pension Standards.](#)
- [5 Big Regulatory Changes Coming in 2014.](#)
- [Bond Insurers Charging Less to Take on Risk.](#)
- [NABL Seeks Guidance on Political Subdivision Question.](#)
- In the middle of a fairly routine eminent domain action, the court drops this deadpan stunner, “Plaintiff appears to allege that these incidents led to the deprivation of his constitutional rights, which caused physical and emotional injuries, [but other parts of the complaint suggest that Plaintiff may be dead.](#)”
- And finally, should you find yourself in the Catskills, drop in for the “[monthly pagan brunch](#)” or the “[monthly, more secular, bisexual brunch](#).” Your call.

- [IRS LTR: Nonprofit's Income Is Exempt as Exercise of Essential Government Function.](#)
- [NABL Says IRS Ruling Having Chilling Effect on Bonds.](#)
- [IRS LTR: Lease Arrangement in Bond-Financed Project Doesn't Give Rise to Security Interest.](#)
- [MSRB Provides Education for Issuers on Disclosure of Bond Ballot Campaign Contributions.](#)
- [SIFMA: US Municipal Bond Credit Report, 2013 Q3.](#)
- [L.A. Bars Broker-Dealers in FA Bid Process, First Southwest Protests.](#)
- [Todd Creek Village Metropolitan District v. Valley Bank & Trust Company](#) - Court holds that the provision of the Colorado Constitution requiring that local government authorities receive voter approval before they may issue general obligation debt does not require that the municipal district seeking voter approval of such debt must identify the specific collateral that will be pledged to secure the debt; worth your time to read through this one.
- [Gesler v. Worthington Income Tax Bd. of Appeals](#) - Supreme Court of Ohio holds that state statute containing definition of net profit for purposes of municipal income tax did not invalidate city ordinance excluding federal Schedule C income from net profit subject to municipal tax.
- [Pennsylvania Waste Industries Ass'n v. Monroe County Municipal Waste Management Authority](#) - Court holds that municipal waste disposal authority was not authorized to set the “tipping fee” at landfills in which it did not have a meaningful ownership or operational interest, but was authorized to charge for its administrative services, including debt service.
- [Michigan Co-Tenancy Laboratory/Trinity Health v. Michigan Pittsfield Charter Tp.](#) - Appeals court affirms tax tribunal's determination that lab equipment held by a group of non-profit hospitals that entered into an arrangement whereby they each possessed, as tenants in common, an undivided interest in the equipment, was exempt from taxation by township.
- “As plaintiff crested the hill upon his arrival at the site with his second haul of the day, [the brakes of his tri-axle dump truck ceased functioning, causing it to barrel past the paving operation and continue down the hill at a high rate of speed](#). According to plaintiff, he had to swerve to avoid oncoming civilian traffic as well as construction vehicles and, when it became apparent that he could no longer control the vehicle, he kicked the door open and jumped from the truck, which then ran off the road, through a guardrail and over an embankment.” What's latin for, “the hilarity speaks for itself”?

- [Washoe-Mill Apartments v. U.S. Bank Nat. Ass'n](#) - Pursuant to the Trust Indenture, and Section 11(b) of the United States Housing Act of 1937, court finds that HUD was entitled to funds remaining in trust account after bonds issued to fund a HUD-subsidized facility were redeemed.
- [City of College Station, Tex. v. Star Ins. Co.](#) - In suit against insurer for failure to defend/indemnify,

court of appeals holds that zoning-related allegations in underlying complaint against city did not fall within the scope of policy's "inverse condemnation" exclusion.

- [*State v. Moore Outdoor Properties, L.P.*](#) - In inverse condemnation action, court holds that lessee's interests in a sign permit, billboard structure, and leasehold form an intertwined property interest - as opposed to personal property - that is compensable in a condemnation proceeding.
- [**SIFMA Weighing Campaign Against Muni Advisor Rule Provisions.**](#)
- [**NYT: Bonds Backed by Solar Power Payments Get Nod.**](#)
- [**GASB Toolkit Helps Pension Plans Implement New Accounting Standards.**](#)
- [**Moody's: Detroit's DIP Proposal Differs Substantially From its Corporate Predecessors.**](#)
- [**Moody's: Report Analyzes Impact of Elimination of Federal Deductions for State, Local Taxes.**](#)
- [**Use EMMA's Email Reminder Service for Recurring Financial Disclosures.**](#)
- [**NYT: Jury Finds Pipe Maker Defrauded Governments.**](#)
- "While on duty on duty, Mr. O'Hern left his patrol assignment and went to his private vehicle. He drove to the top floor of a downtown parking garage, consumed a bottle of whiskey and ingested nearly a dozen Clonazepam (anti-anxiety) tablets. He then tasered himself and discharged his firearm over twenty times, shooting through the windshield and roof of the vehicle." Turns out that incidents such as this are likely to end up on your [permanent record](#).

- [*O'Brien v. New York State Com'r of Educ.*](#), in which the appeals court concluded that - for the purpose of calculating a school district's constitutional and statutory debt limit - indebtedness is not incurred until the authorized bonds are actually sold, i.e., issued, rather than on the date the bonds are authorized.
- [*Elizabeth River Crossings OpCo, LLC v. Meeks*](#), in which the Supreme Court of Virginia upheld the constitutionality of the Public-Private Transportation Act, a comprehensive agreement regarding construction and operation of a new tunnel and other facilities; exhaustive analysis of delegation of power issues.
- [**For the SEC, a Continued Focus on the Municipal Bond Market.**](#)
- [**Wenatchee, Wash. Issuer, Others Settle SEC Arena Fraud Case.**](#)
- [**Municipal Bonds and Accountability to the General Electorate.**](#)
- [**Fitch: Stockton Bankruptcy Plan Could Influence Negotiations, Settlement Elsewhere.**](#)
- [**GASB: Pension Standards for State and Local Governments.**](#)
- [**The Role of Issuer's Counsel in a Municipal Bond Offering.**](#)
- [**The Bond Buyer Announces Finalists for 12th Annual Deal of the Year Awards.**](#)
- Other things we learned this week include: courts are likely to be a tad skeptical about alleged [50-year oral employment agreements](#); before joining ["Friends of Forrest,"](#) note that you're befriending the confederate general Nathan Bedford and not the somewhat less controversial Mr. Gump; and there might be some explaining to do if you [inadvertently tase a middle school student](#) during a routine presentation on stun guns.
- And finally, the latest entry into the Annals of Awkward Eulogies is brought to you by [City of Atlanta v. Durham](#). I don't know about you, but I'd like to think that I'd notice some kind of ruckus outside before the demolition crew literally brought the house down upon me.

- [*Stifel, Nicolaus & Co., Inc. v. Lac du Flambeau Band of Lake Superior Chippewa Indians*](#), in which the District Court juggled complex jurisdictional issues in litigation following Indian tribe's repudiation of a bond issuance; District Court concludes that it has jurisdiction and schedules

hearing to determine if tribe would be enjoined from continuing to pursue action in Tribal Court. Must-read cautionary tale for those engaged with tribal agencies.

- [*Petrozzi, et. al. v. City of Ocean City*](#), Although City was not required to honor easement agreement with oceanfront landowners requiring it to reduce sand dune height due to impossibility resulting from subsequent environmental regulations, court concludes that the landowners are entitled to a hearing to determine a fair and just restitutive amount for performing their part of the bargain with City.
- [*Fury v. City of North Bend*](#), in which the court annulled assessments imposed on parcels added to improvement district, finding that those parcels had been denied the right to challenge the expanded scope of the underlying improvement.
- [Bloomberg: Banks Fret Over Fed's Planned Liquidity Requirement.](#)
- [Municipal Market Participants Shocked By New LCR Definitions.](#)
- [Bingham McCutchen: A Guide to the Re-Proposed Credit Risk Retention Rules for Securitizations.](#)
- [Why a New Water District Might Not Save Cash: Higher Interest Rates.](#)
- [ABA: Locked Down: Security in Using Cloud Services and Mobile Devices.](#)
- [Pension Bonds Draining Municipal Agencies.](#)
- This final bullet is brought to you by International Directorate on Intermittent Office Transcription (IDIOT). In [*City of Laredo v. Montano*](#) a stupefied Supreme Court of Texas struggles to make sense of the fact that the prevailing attorney in an eminent domain action – awarded fees of \$339,000 by the trial court – failed to keep any billing records whatsoever during the course of his four-year representation of the plaintiff. Throws up its collective hands & remands. Good luck explaining that one to your spouse.

- [*Willow Bend Estates, LLC v. Humphreys County Bd. of Sup'rs*](#), in which the Supreme Court of Mississippi held that Mississippi Code Section 27-35-50(4)(d) – requiring local tax assessors to use the “actual net income” methodology rather than the “cost” methodology – prohibits local governments from including the value of federal tax credits in their valuation of properties for tax assessment purposes.
- [*Cedar River Water and Sewer Dist. v. King County*](#), in which the Supreme Court of Washington found a sufficient nexus between a county sewage treatment plant and the associated mitigation package paid to the adjoining county on which the plant was built, upholding the mitigation package in challenge brought by local utility districts; also affirmed credit enhancement fee paid by county.
- [*Borough of Saddle River v. 66 East Allendale, LLC*](#), in which the Supreme Court of New Jersey held that jury in eminent domain valuation case was improperly allowed to hear evidence about the probability of a zoning change that should have been ruled on by the judge both in advance and outside of the jury’s presence.
- [*Moss v. City of Dunwoody*](#), in which the Supreme Court of Georgia upheld the constitutionality of a city ordinance imposing an occupational tax on attorneys who maintained an office and practiced law in the city.
- [MSRB Proposal to Consolidate Guidance under MSRB Rule G-17 Published in Federal Register.](#)
- [MSRB Proposal to Amend Rule G-11 Published in Federal Register.](#)
- [IRS Releases Tax Statistics on Municipal Bonds.](#)
- [Bloomberg State & Municipal Finance Conference.](#)
- [2013 Conference on Public Pension Underfunding.](#)
- [More Wisconsin Issuers Could Redeem Direct-Pay Bonds.](#)
- We ran across two very nifty interactive tools this week, [The Urban Institute's Data Dashboard](#) and the [Tax Policy Center's State & Local Finance Data Query System](#). Ask a small child to walk

you through them.

- And finally we come to [*Barna v. Board of School Directors of Panther Valley School Dist.*](#), in which a school board attendee declined the invitation to bring like-minded individuals to the meetings because “they carry guns, you wouldn’t want that.” Upon being asked to leave, he remarked to the audience that he might just return and take them all out. Nevertheless, the judge found that the school board president had used these remarks as a “pretext” to claim a “threat” to the school board. What’s a wingnut gotta do to establish a legitimate threat these days? Brandish a flamethrower?

- The good folks at Baker Donelson have kindly provided us with the entire Order Granting Indenture’s MSJ from their win in [*In re Memorial Corrections, LLC*](#), which we covered last week. The pdf is appended to the case brief. Should you encounter items that may be of interest to the BCB community, please feel free to send them our way and we’ll do our best to make them available to all.
- [*Ashton Urban Renewal Agency v. Ashton Memorial, Inc.*](#), In a matter of first impression, the Supreme Court of Idaho holds that urban renewal agency had a pecuniary interest in board of equalization’s decision to issue tax exemption, such that it had standing to appeal decision to board of tax appeals as an aggrieved person.
- [*In re City of San Bernardino California*](#), Bankruptcy court confirms city’s eligibility to file a petition under chapter 9 of the Bankruptcy Code, overruling CalPERS’ objections that the city did not desire to effect a plan of adjustment (§109(c)(4)) and did not file the petition in good faith (§921).
- [*U.S. v. Murphy*](#), Court applies ten year statute of limitations in bond bid-rigging scheme pursuant to 18 U.S.C. § 3293(2), which extends the statute of limitations from five years to ten “if the offense affects a financial institution.”
- [*Hotels.com, L.P. v. Pine Bluff Advertising and Promotion Com'n*](#), Supreme Court of Arkansas upholds class certification in action by city and county agencies against online travel companies for failure to collect and/or remit full amount of gross-receipts taxes imposed by government entities on hotel accommodations.
- [*Reuters: U.S. Reopens Bond Sales to State, Local Governments.*](#)
- [*NFMA: Introduction to Municipal Bond Credit Analysis.*](#)
- [*FINRA Publishes Report on Conflicts of Interest.*](#)
- [*NLC Report Finds City Finances Improving, but Remain Tenuous.*](#)
- Another fairly quiet week as we stagger off the carnival ride, “Adventures in Constitutional Democracy.” Be sure not to overlook *Jimmy Carter vs. Scrooge McDuck* (wait, that’s [*City of Asheville v. Resurgence Development Co., LLC*](#)) in which the court wrestled with the thorny question of whether the granting of a 435 sq. ft. easement to allow a Habitat for Humanity project to connect with the public sewer system “confers a public benefit.” In a shocking twist, turns out it does.

- [*In re Municipal Corrections, LLC*](#), in which the District Court concluded that an unrecorded Indenture gave the Bond Trustee a mortgage on the real property pledged as security and that the mortgage was enforceable against a bona fide purchaser under principles of constructive and inquiry notice that apply under Georgia law.

- [*Turner County v. City of Ashburn*](#), in which the Supreme Court of Georgia held that the section of the Local Option Sales Tax Act allowing the superior court to determine distribution of tax proceeds in special taxing district violated separation of powers.
- [*Mira Mar Development Corp. v. City of Coppell, Texas*](#), in which the Court of Appeals engaged in a very thorough analysis of whether conditions imposed on developer were exactions and, if so, whether the City established (1) an essential nexus to the substantial advancement of a legitimate government interest, and (2) rough proportionality to the projected impact of the development.
- [*Ray v. Judicial Corrections Services*](#), in which probationers' civil rights claims against town that hired private company to provide probation and fee-collecting services survived motion to dismiss. This is an interesting case for those municipalities considering outsourcing certain judicial functions.
- [U.S. States, Local Gov'ts Slow to Post Finance Reports.](#)
- [Debt-Ceiling Alarm Freezes Market With Least Supply: Muni Credit.](#)
- [GFOA Executive Board Approves 14 Best Practices.](#)
- [SEC Wants Muni Underwriters to Stay on Top of Disclosure.](#)
- [MSRB Publishes Introduction to Being Regulated for Municipal Advisors.](#)
- [MSRB Publishes Printable Version of its Online Glossary of Municipal Securities Terms.](#)
- It's been a very quiet week, folks. Almost feels as if certain government agencies are a little distracted, or sent folks home early or something. Not sure why. Columbus Day? Lest you despair at the prospect of perpetual gridlock, please note the ray of light introduced by Chuck Schumer via Senate Bill 1531; the Cider Investment and Development Through Excise Tax Reduction (CIDER) Act. So at least we've got that going for us. Which is nice.
- And finally, the concept "firm but fair" is stretched well beyond the breaking point by the Village of Park Forest Manager in an email to the Village Police Chief regarding a local apartment complex in which he states that, ["I enjoy shoving it up their ass in a firm but diplomatic and professional manner."](#)

- [IRS Lists Factors for Determining if Entity Is an Instrumentality of State or Local Government.](#)
- [Shutdown Halts Rebates on Build America Bonds, Dents Appeal.](#)
- [California City Prevails Against Investor Lawsuit.](#)
- [NABL Teleconference: Ethical Lessons for Bond Counsel of the GIC Bid-Rigging Trials and Settlement.](#)
- [GASB Fact Sheet on Statement 34.](#)
- [MSRB Publishes First Report on Timing of Municipal Bond Annual Financial Disclosures.](#)
- [*In re Mendocino Coast Recreation and Park District*](#), in which the District Court affirmed the Bankruptcy Court's decision that the park district complied with 11 U.S.C. § 109(c)(5)(B)'s good faith negotiation requirements for eligibility as a municipal debtor under Chapter 9; very useful discussion of a municipality's pre-bankruptcy obligations.
- [*Wells Fargo Bank, National Association v. Leaf's Hockey Club, Inc.*](#), in which the court declined to dismiss suit brought by trustee against guarantor in bond default, finding diversity of citizenship and no cause to stay and dismiss under the *Colorado River* abstention doctrine.
- [*Tutor Perini Corp. v. Banc of America Securities LLC*](#), in which the court found that ARS investor had failed to state claims for civil conspiracy, breach of contract and conversion, but that its remaining securities law claims were sufficient to comply with the applicable pleading standards and to state a claim for relief.
- Other things we learned this week include: if [police officers are literally incapacitated by the ammonia emanating from your home](#) and find "300 snakes and 400 mice, along with a cat, lizards, iguanas, cockroaches, rats, and various feed insects in the maggot, pupae, or larvae stage" you

might have some explaining to do; should you find yourself in New Brunswick, NJ, be sure to drop in for a bite at the tastefully-named "[Buck Foston's](#)"; and, shockingly, that [a garden gnome is not a structure.](#)"

- [In re Allstate Life Ins. Co. Litigation](#), in which bond counsel was granted summary judgment on most claims brought against it in complex litigation following failed bond issuance; although it may ultimately be liable for failing to harmonize development agreement and indenture, resulting in inconsistency regarding which party was to hold an escrow account, thus creating disbursement complications.
- [In re Oklahoma Development Finance Authority for Approval of Oklahoma State System of Higher Educ. Master Real Property Lease Revenue Refunding Bonds, Series 2013A, 2013F](#), in which the Supreme Court of Oklahoma validated bonds issued by the Oklahoma State Regents for Higher Education; because these bonds are payable only by the Regents, they cannot become debts of the state as a matter of law and thus do not violate the state's balanced budget provisions.
- [MSRB to Implement Revised Rules Addressing Retail Order Periods](#).
- [SIFMA to SEC: MSRB Proposals Too Burdensome](#).
- [ABA Meeting: IRS Official Listens as Proposed Bond Arbitrage Regs Are Panned](#).
- [Nebraska Issuer Pays \\$350K to Settle BAB Dispute With IRS](#).
- [WSJ: Muni Bond Issuers Slow to Report Finances, Study Shows](#).
- [Debt Ceiling Impasse Would Hurt Muni Issuers – Moody's](#).
- And finally, "[One Man's Arsonist is Another Man's Fire Chief](#)," in which the Chief, upon discovering that it would cost \$10k to remove some structures from his property, arranged a "training exercise" in which his boys would simply burn 'em down, "even though gasoline tank batteries were located on nearby property on three sides of his property, trains operated on tracks on the immediate east side of his property, electrical lines were near the structures, and there was a large tree that could have caught fire. Further, there was no water immediately available at the proposed burn site." What could possibly go wrong?

- It's been a busy week, folks, so pay attention.
- On the regulatory side, the SEC adopted final [Muni Advisor Rules](#) and the MSRB filed proposed rule changes to [MSRB Rule G-11 on Bondholder Consents](#). We highly recommend that you take a look at each of the articles contained in the Regulatory section of this week's issue.
- On the tax side, the IRS stirred up the proverbial hornets' nest with its proposed new [Issue Price Rules](#) and is preparing to add new [Resolution Standards to VCAP](#).
- We have also included both the full text, and an introductory summary of, the IRS' recently proposed [Regs on Arbitrage Restrictions on Tax-Exempt Bonds](#) and [Regs on Arbitrage Rebate Overpayments on Tax-Exempt Bonds](#). Once again, we highly recommend that you take a look at each of the articles contained in the Tax section of this week's issue.
- [Independent Training and Apprenticeship Program v. California Dept. of Indus. Relations](#), in which the Court of Appeals held that the California Department of Industrial Relations can require contractors on projects funded by Build America Bonds and tax-exempt municipal bonds to comply with California's apprenticeship standards, finding no federal preemption.
- [Nuveen Mun. High Income Opportunity Fund v. City of Alameda, Cal.](#), in which the Court of Appeals held that an institutional investor that lost money on its purchase of municipal bonds had not shown a triable issue of fact on the issue of loss causation; claim was missing necessary link

between the claimed misrepresentations and the economic loss investor suffered.

- [Citibank N.A. v. City of Burlington](#), in which the City of Burlington alleged that Citibank breached an understanding that it would provide additional funding upon request; court discussed enforceability of promises to negotiate in good faith; not enforceable in this instance, but indicated that City possessed a valid promissory estoppel claim.

- [IRS Issues Proposed Regs on Arbitrage Restrictions on Tax-Exempt Bonds.](#)
- [IRS Issues Proposed Regs on Arbitrage Rebate Overpayments on Tax-Exempt Bonds.](#)
- [IRS Releases Proposed Issue Price Rules, Draws Concerns.](#)
- [SIFMA and GFOA Submit Comments to SEC Regarding Proposal to Amend MSRB Rules G-8, G-11 and G-32 in regards to Retail Order Periods.](#)
- [WSJ: Bond Lawyers Rattled by Proposed Clampdown on Local Borrowing.](#)
- [GFOA: 18th Annual Governmental GAAP Update.](#)
- [Kozel v. Andrews](#), in which the bankruptcy trustee sued hospital board members, alleging that they acted improperly by issuing \$17.3 million in revenue bonds while its finances were in poor condition; appeals court remanded, holding that appropriate standard of care for board's actions was "reckless," not "willful."
- Concerned with possible zoning violations arising from "[Pornotopia](#)," the good folks at the City of Albuquerque sent two zoning enforcement inspectors to the festival where they had the pleasure of sitting through "Couch Surfers, Trans Men in Action." Stay tuned for the ensuing PTSD claims.
- And finally, we learned this week that [repeatedly hitting an elderly Alzheimer's patient with a Taser](#) doesn't look so good on a resume. Who knew?

- [Oppenheimer AMT-Free Municipals v. ACA Financial Guar. Corp.](#), in which the appeals court held that the cancellation and replacement of bonds in connection with an issuer's bankruptcy proceedings did not relieve bond insurer of its obligation to make payments in any subsequent default.
- [MSRB Files Revised Amendments to MSRB Rules on Retail Order Periods with SEC.](#)
- [WSJ: Muni Advisers Face Tougher SEC Rules.](#)
- [Final Regs Remove References to Credit Ratings in Tax Code Rules.](#)
- [TEB Phone Forum: Voluntary Compliance and Voluntary Closing Agreement Program.](#)
- [GASB Proposes Measurement Concepts for Assets and Liabilities and Standards for Measuring, Applying, and Disclosing Fair Value.](#)
- [Board of Educ. of Du Page High School Dist. 88 v. Pollastrini](#), in which the appeals court articulated the requirements necessary to establish a valid signature on petitions and ballots.
- And finally, [Cross v. Baltimore City Police Dept.](#), an employment case in which a Baltimore police officer was terminated after marrying a prison inmate. Apparently a second-degree murder conviction answers the "question" component of "persons of questionable character." The officer's better half was also a member of the notorious prison gang, "Dead Man, Inc." Dead Man, Inc. is, according to the court, organized as follows - "supreme commander, commander, lieutenant commander, a sergeant at arms, and, in some units, an *accountant*." Officer's hubby was a supreme commander. I guess power really is the ultimate aphrodisiac. After reading this case, your editor was left with more questions than answers, including: 1) Where'd the loving couple register - Bloodbath and Beyond? 2) Expands significantly the definition of "mixed marriage," eh? 3) You can probably tell a lot about a person by whether they find the idea of this particular

bachelor party terrifying or intriguing. 4) Is Dead Man, Inc.'s accounting GAAP-compliant? 5) Who advised Dead Man, Inc. to incorporate? Was it not made aware of the benefits of pass-through taxation provided by an LLC?

- [*People ex rel. Cuomo v. Charles Schwab & Co., Inc.*](#), in which the court held that the AG had a sufficiently stated a claim under the Martin Act, and b) sufficiently pled a nexus with New York, in an enforcement action against registered securities broker-dealer, alleging that broker-dealer engaged in fraudulent and deceptive conduct in the sale of auction rate securities.
- [*Paff v. Atlantic City Alliance, Inc.*](#), in which the court concluded that a private non-profit corporation formed for the purpose of entering into a public-private partnership with a public redevelopment authority was not a "public agency" subject to the provisions of the Open Public Records Act.
- [*Miami Trace Local School Dist. v. Washington C.H. City School Dist.*](#), in which the court held that the 30-percent-payment provision in land transfer agreements between two school districts applied only to the funds received from transferee school districts' operating levy, but not funds received from its subsequently-enacted permanent levy and bond issue.
- [IRS EO Update - e-news for Charities & Nonprofits - August 30, 2013.](#)
- [FASB Releases Updates in its Definition of a Nonpublic Entity Project.](#)
- [WSJ: Detroit's Woes Add to Angst Over Municipal Debt.](#)
- [Pension Costs Burden Local Government Budgets.](#)
- [Bonds: Beware This Major Flaw in Moody's Rating System.](#)
- In other news, New York courts apparently refer to minors as "infants," which lead to some hilarious imagery in a New York case in which a [beer-fueled brawl](#) broke out between "infants" on a high-school football field. They're so cute at that age. Finally, we come to a NYT article about the epidemic of POCBS - [Power Outages Cause By Squirrels](#) - in which we learned that the country's foremost squirrel expert "trapped squirrels with a mixture of peanut butter and Valium." Coincidentally, that's also how I was trapped into taking this gig.

- [MSRB Provides Guidance for State and Local Governments When Hiring Municipal Advisors.](#)
- [SIFMA US Research Quarterly, 2013 Q2.](#)
- [FINRA Fines Morgan Stanley \\$1M for Unfair Pricing.](#)
- [FINRA Fines Four Firms, Two Individuals \\$270,000 For Muni Violations.](#)
- [IRS: Comments Sought on Regs on Standards for State, Local Bond Opinions.](#)
- [Help Your Clients Avoid the Next Detroit: The Bond Buyer Editorial Web Seminar.](#)
- [Bond Dealers of America: The 5th National Fixed Income Conference.](#)
- [NYT: In Paper War, Flood of Liens Is the Weapon.](#)
- Bond Case Briefs' Department of Antiquated Names brings you both an "[Edna](#)" and a "[Velda](#)" this week.
- A Second Amendment case entitled "[State v. Christian](#)" practically holds a gun to your head and demands a joke, no? Yeah, you'll get that when you pry the remnants of my common sense from my cold, dead fingers.
- And finally, a judge this week made reference to an existing Wal-Mart "[of traditional dimension and retail offerings](#)" when discussing plans for a new Wal-Mart Supercenter. I had not previously been aware that Ye Oldde Wal-Mart could trace its history back through the iron and bronze ages all the way to the initial Wal-Henge.

- [IRS: Community Development District Doesn't Qualify as Political Subdivision.](#)
- [MSRB Publishes Updated and Enhanced Online Glossary of Municipal Securities Terms.](#)
- [Bond Dealers of America Bankruptcy Paper: Detroit May Be "Game Changer."](#)
- [TEB Phone Forum: Monitoring Post-Issuance Compliance.](#)
- [Moody's Proposes More Focus on Public Pension Obligations in Bond Ratings.](#)
- [*Borough of Seaside Park v. Commissioner of New Jersey Dept. of Educ.*](#), in which the court upheld the constitutionality of legislative mandate that regional school districts be funded through equalized valuation, rather than on a per-pupil basis.
- Rather a quiet week, but be sure to catch the first bullet point above. In order to request a pro rata refund of this week's subscription price, please write to WhenHellFreezesOver@bondcasebriefs.com.
- And finally, Great Moments in Pedagogy brings you *Festa v. Board of Educ. of Town of East Haven*, in which a teacher objected to a proposed transfer by stating that she struggled with "certain cognitive difficulties" and therefore, she would "not be able to handle adequately the complexities of a third grade level teaching responsibility." To paraphrase Clint, "A woman's gotta know her limitations."

- Hey folks, it's come to my attention that typographical errors have been popping up when the HTML newsletter is opened in certain programs. We apologize and are working to identify and fix the problem.
- [IRS May Make New Jersey Authority's Municipal Bonds Taxable Because of Total Return Swap.](#)
- [MSRB Publishes New Guidance and Educational Resources about State and Local Government Financial Disclosure.](#)
- [Commission Adopts Rules to Increase Protections for Investors with Assets Being Held By Broker-Dealers.](#)
- [*Water Works Bd. of City of Birmingham v. AMBAC Financial Group, Inc.*](#) – Bond insurer's credit rating dropped from AAA to AA, triggering requirement that water board deposit cash into reserve fund; court holds that insurer had no duty to maintain AAA rating, dismissing water board's action for breach of contract, fraud, suppression of truth, and negligence.
- [*Hinds County, Miss. v. Wachovia Bank N.A.*](#) – West Virginia granted leave to amend complaint to reinstate claims against GE Funding in multidistrict litigation against various financial institutions and brokerage firms, alleging conspiracy to illegally rig bids, limit competition, and fix prices in municipal securities derivatives market.
- [Los Angeles County Bars Brokers That Donate to Bond Campaigns.](#)
- This issue contains a couple of news items concerning the eminent domain mortgage-seizure issue. If this issue is of particular interest to you, you may want to bookmark SIFMA's Eminent Domain Resource Center at:
<http://www.sifma.org/issues/capital-markets/securitization/ eminent-domain/ overview/>
- And finally, one of the more terrifying cases I've run into in some time. *Ben Bartlett et ux. v. Commissioner*, in which the Tax Court, sustaining accuracy-related penalties, held that a couple's loss deductions related to a bull breeding activity were limited by the passive activity loss rules of section 469, finding that they failed to show that the husband *materially participated in the activity*. Yikes, that's a tough business.

- [SEC Charges School District and Muni Bond Underwriter in Indiana with Defrauding Investors.](#)
- [TIGTA Finds Potential for Fraudulent Bond Tax Credit Claims.](#)
- [SIFMA US Municipal Bond Credit Report, 2013 Q2.](#)
- [MSRB Seeks Input on Potential Enhancements to Price Transparency in the Municipal Market.](#)
- [WSJ: Search for Muni-Bond Guidepost Sputters.](#)
- [U.S. Bank Nat. Ass'n v. Wright](#) – In dispute over letter of credit drawn down by Indenture Trustee following bond default, court grants parties additional time to formally stipulate that bankrupt development would not dispute the drawdown prior to ruling on development's mootness defense to Trustee's complaint seeking declaratory judgment.
- [Alfonso v. Diamondhead Fire Protection Dist.](#) – In a matter of first impression, Supreme Court of Mississippi holds that fire protection district's monthly fee was based on "services rendered" and, thus, was a permissible fee and not an illegal tax.
- [Koponen v. Pacific Gas & Electric Company](#) – Court declines to certify class in suit alleging that PG&E's installation of fiber-optic lines along existing utility easements constituted trespass and exceeded the scope of the easement.
- [Calguns Foundation, Inc. v. County of San Mateo](#) – Court upholds a county ordinance precluding the possession and use of guns in county parks and recreation areas, finding no preemption by state statute.
- Pretty interesting week. Sure, some significant muni developments went down, but let's not lose track of what really matters – overly enthusiastic police officers [blowing through six intersections at 120 mph](#) responding to a routine call and a chief of police responding to a dispatcher terrified of a [psycho-stalker colleague](#) with, "That man is crazy. I don't know what to say about that man. You all better watch him." She then goes to over his head to the mayor, who comforts her by saying, "I don't blame him baby. I'd like to follow you around, too. Look at you. Why wouldn't he want you?" Priceless. Shockingly, a sexual harassment suit ensued.

- [Commission Charges City of Miami and Former Budget Director with Municipal Bond Offering Fraud.](#)
- [Miami Case Shows SEC Increasingly Targeting Individuals; Willing to Fine Cities.](#)
- [SIFMA Proposes 'Execution With Diligence' Standard for Municipal Trading.](#)
- [IRS LTR: Loan Sale Won't Cause State Agency to Be Treated as Taxable Mortgage Pool.](#) The IRS ruled that a state government agency's proposed sale of certain mortgage loans purchased with tax-exempt bond proceeds won't cause any portion of the agency to be classified as a taxable mortgage pool under section 7701(i).
- [Reuters: Muni Board Watching General Obligation Debt in Detroit Case.](#)
- [Moody's: Detroit Bankruptcy May Change How Other Distressed Cities Approach Obligations.](#)
- [NYT: Cities Need to Weigh Costs of Private Partnerships.](#)
- Should you wish to learn more about a particular case than provided by the one-sentence synopsis, click on the case name in the newsletter, which will take you to the full entry on the website. If starting from the website, simply click on the case name.

- [MSRB Provides State and Local Governments with Tool to Improve Disclosure of Financial Information.](#) This service allows state and local governments to schedule automated email

reminders about an approaching deadline for providing annual and quarterly financial disclosures.

- [Marysville Exempted Village Local School Dist. Bd. of Edn. v. Union Cty. Bd. of Revision](#), in which the Supreme Court of Ohio held that a valuation complaint validly invokes jurisdiction when the property owner is a corporate entity and the complaint was prepared and filed by a salaried employee of the entity who is neither an officer nor a lawyer.
- [City of Champaign v. Madigan](#), in which the court held that communications “pertaining to public business” and sent to and from individual city council member’s personal electronic devices during the time that city council meetings were convened are subject to FOIA.
- [NYT: Public-Private Partnerships Could Be a Lifeline for Cities](#).
- [Basel III Rules Likely to Curb Big Banks’ Muni Purchases](#).
- [SIFMA Social Media Seminar - October 16 - NYC](#).
- Yes, I am aware of the little Detroit kerfuffle. Rather than breathlessly spamming you with a moment-by-moment account of the proceedings, we’ll be trying to limit our coverage to matters of general/gloval interest and significance.
- Otherwise, a very quiet week. You’ll want to get up to speed on the new MSRB tool referenced above and pass that info on to clients as you see fit. And finally, from our Department of Understatement, comes the excited utterance (admitted as such) of a terrified teacher who expressed concern that a terminated co-worker had [“not been making good choices”](#) following his traumatic brain injury.

- [Bluebonnet Hotel Ventures, LLC v. Wachovia Bank, N.A.](#), in which the court declined to rescind interest rate swap contract – entered into by developer at bank’s suggestion – in connection with bond issuance, finding that swap was not contingent upon extension of letter of credit by bank, which was never executed.
- [Kane v. Township of Williamstown](#), holding that a resolution that permitted a township to assess an ad valorem special assessment for police protection also permitted the township to assess and implement a uniform-fee special assessment.
- [Borough of Harvey Cedars v. Karan](#), in which the Supreme Court of New Jersey held that calculation of just compensation in eminent domain action is required to include benefit that homeowners obtained as a result of storm protection provided by construction of sand dune that was the cause of the eminent domain action.
- [Louisiana Mun. Police Employees’ Retirement System v. JPMorgan Chase & Co.](#), in which the court found nothing illegal about bank’s charging of undisclosed mark-ups on foreign exchange transactions executed for custodial clients.
- [US Municipal VRDO and FRN Update, June 2013](#).
- [Brokers Willing to Pay Up for Fiduciary Standard: SIFMA](#).
- [MSRB Releases Report on Municipal Bond Continuing Disclosure Documents](#).
- [MSRB to Launch Disclosure Tool; Will it Lead to Dispute with DAC?](#)
- [IRS: FSLG July 2013 Newsletter](#).
- [GFOA: New Pension Numbers for Books, Budgets, and Bonds](#).
- [WSJ: With Palo Alto on Board, OpenGov Aims for Transparency in Dozens More City Governments](#).
- And finally, a laudable attempt to make soccer entertaining. Assistant soccer coach jumps up, grabs the goal’s [crossbar](#), and pulls the entire apparatus down onto his face. I’d watch that.

- [Los Angeles Unified School District v. County of Los Angeles](#), in which the court held that the

share of a school district's property tax revenue that was diverted from Educational Revenue Augmentation Funds (ERAF) by virtue of the Triple Flip and Vehicle Licensing Fee Swap legislation is to be counted as ERAF revenue in calculating district's property tax allocation base, thus avoiding either a decrease in the school district's passthrough payment allocation or an increase in a city or county's passthrough payment allocation.

- [Village of Sugar Grove v. F.D.I.C.](#), in which the FDIC denied village's deposit-insurance claim, reasoning that the LOC's issued by failed bank were not "deposits" under 12 U.S.C. § 1813; noting that tax-exempt bonds backed by unfunded LOC's would become taxable if those LOC's were deemed "deposits."
- [SEC Cracks Down on Disclosure in Municipal Bond Sales.](#)
- [Reminder: Amendments to MSRB Rules G-37 and G-8 Become Effective July 1.](#)
- [IRS LTR: Issuance of New Bonds Determined to Be Refunding of Existing Bonds.](#)
- [IRS: Exempt Organization Update.](#)
- [GASB Issues Proposal Addressing Transition Issue in Pension Standards.](#)
- [GFOA Executive Board Approves Best Practice on Actuarial Valuation Reports.](#)
- From the I Swear I Am Not Making This Up Department comes the classic tale of a New Jersey police officer on disability leave who is fired after beating up an off-duty police officer at the [Blarney Stone](#) in Oklahoma following a disparaging remark about the NJ officer's cowboy hat. And why is there something inherently funny about [falling down a manhole](#)? See also, Mel Brooks' "If I get a paper cut, that's tragedy. If you fall down a manhole and die, that's comedy."

- [Hilgers v. Jefferson County](#), in which the court held that a County's power to set sewer-service charges, etc. was not limited to only that portion of those charges that arose from the repayment of the bonds issued pursuant to the Amendment to State constitution that provided county could incur bonded indebtedness exceeding the then 3.5% debt limit in order to finance improvements to its sewer system.
- [Koontz v. St. Johns River Water Management Dist.](#), a case of potentially immense significance in which the Supreme Court limited the ability of municipalities to condition land use permits on landowner's funding of offsite mitigation projects. See also, [NYT: A Legal Blow to Sustainable Development.](#)
- [FINRA Fines StateTrust Investments \\$1 Million and Orders \\$353,000 in Restitution for Charging Unfair Prices in Bond Transactions.](#)
- [IRS Publication: Voluntary Compliance for Tax-Exempt and Tax-Credit Bonds.](#)
- [GASB Issues Implementation Guide for Pension Plans.](#)
- [SIFMA Compliance & Legal Society San Francisco Regional Seminar.](#)
- Fairly interesting week. Those of you who work with municipalities should familiarize yourselves with [Koontz](#), above, due to its potential to dramatically alter existing land-use and development protocols. Otherwise, the week's most significant development arose in [Southern California Edison Company v. City of Victorville](#), in which the city's cross-complaint named "Moes 1-30" (pending Curly's deposition?), ushering in a new era of Stooges-based jurisprudence. "Your honor, permission to poke the witness in the eye?" We're gonna miss the good old days of mere badgering.

- [Sherman v. City of Atlanta](#), in which the Supreme Court of Georgia held that the trial court was required to determine objectors' standing before addressing merits of objections in bond validation

hearing and that attorney proffers were insufficient to establish objectors' standing; greatest case name ever!

- [Land of Lincoln Goodwill Industries, Inc. v. PNC Financial Services Group](#), in which the District Court upheld a prepayment penalty in tax-exempt economic development revenue bond issuance; one-time interest rate reset did not make this a variable-rate loan.
- [Wagner & Stoll, LLC v. City of Schenectady](#), in which the court held that funds paid by landowner to school district under PILOT program constituted "excess taxes" for the purpose of refund owed to landowner subsequent to reassessment of property.
- [City of Los Angeles v. Superior Court](#), in which the Supreme Court of California held that employee grievances arising from furlough plan are arbitrable under the MOU between city and its employees.
- [MSRB Reminder: Amendments to MSRB Rules G-37 and G-8 Become Effective July 1, 2013.](#)
- [IRS: Adequate Written Procedures Needed for Post-Issuance Compliance With Bond Requirements.](#)
- [Nonlegal Roles of IRS Attorneys May Waive Attorney-Client Privilege.](#)
- [GASB Issues Proposals on Concepts for Measurement of Assets and Liabilities and on the Measurement and Application of Fair Value.](#)
- [Internet Seminar on the GFOA's New Program for Small Governments that Prepare Modified Cash Basis Financial Reports.](#)
- [More Issuers Contemplate BAB Redemptions.](#)
- This week's issue is jam-packed with rich, muni goodness so we'll let you get on with it. But before we go, please note that [hitting a disabled man riding an adult tricycle with a pickup truck](#) might be a public relations problem, but it ain't gross negligence. And finally, this week gave us the greatest case name we may ever see – [Sherman v. City of Atlanta](#). My high school history's a little fuzzy, and frankly I don't give a damn, but I seem to recall that Sherman took a more hands-on approach the last time around.

- [In re Allstate Life Ins. Co. Litigation](#), in which the district court found that underwriters' counsel spent enough time reviewing and editing the POS in a bond sale that a trier of fact could find that it had actual knowledge of the misstatements contained in the POS, thus giving rise to a duty to disclose, given their substantial role in the transaction.
- [GFOA: Building a Better Budget Document](#), Second Edition.
- MSRB Files with the SEC [Amendments to MSRB Rules on Retail Order Periods.](#)
- MSRB Reminds Investors, Market Professionals to [Assess Terms of Build America Bonds and other Direct-Pay Bonds](#) in Light of Federal Sequester.
- Study Claims Billions of Dollars of [Excessive Muni Markups](#).
- A series of interesting articles concerning the situation in Detroit, including: [In Embattled Detroit, No Talk of Sharing Pain; Detroit Restructuring Plan Includes Bond Default](#); and [Detroit Default Shines A Light on Bond Insurers](#).
- A Wall Street Journal piece, [Intelligent Investor: What's Eating Munis?](#) and the follow-up, [How to Buy Muni Bonds.](#)

- In a precedent-setting decision that could have major ramifications for issuers, the IRS has ruled that a [Florida Community Development District](#) is not a political subdivision that can issue tax-exempt bonds.
- Panelists at a [GFOA conference](#) warned issuers to be wary of dealer contracts that might violate

municipal securities rules and to make sure they are using properly registered municipal advisors.

- [Chenango Forks Cent. School Dist. v. New York State Public Employment Relations Bd.](#), in which the court upheld a determination of the Public Employment Relations Board (PERB) which found that school district had committed an improper employer practice by failing to negotiate discontinuance of its longstanding practice of reimbursing retirees' Medicare Part B premiums.
- [Candlewood Hills Tax Dist. v. Medina](#), in which a Connecticut court held that a taxing district's board members do not owe a fiduciary duty to the district's residents.
- [Freeny v. City of San Buenaventura](#), holding that public employees' tort immunity for legislative decision-making applies even when that decision-making is also alleged to involve the making of misrepresentations motivated by "actual fraud, corruption or actual malice."
- [Weaver v. Madison City Bd. of Educ.](#), in which the court concluded that a local city school board is a political subdivision, not an arm of the State, and thus not immune from suit in USERRA claim.
- [WSJ: Should You Buy Taxable Muni Bonds?](#)
- [WSJ: Record Muni Bankruptcy Nears End; Jefferson County's Creditors Agree to Forgive \\$1.2 Billion of Debt; Hedge Funds Stand to Profit in Deal. NYT: Bankruptcy in Alabama County Offers Warning for Other Municipalities. NYT: A County in Alabama Strikes a Bankruptcy Deal.](#)
- Other things we learned this week include: in Missouri, "[nepotism](#)" includes paying your deadbeat son-in-law \$100 to fix a wooden sign (Chicago politicians must have got a hearty chuckle out of that one); Minnesota has something called the "[Buy-the-Farm](#)" statute; a minor altercation with an autistic 12 year-old is highly unlikely to result in [PTSD](#); a case involving the validity of [14 absentee ballots](#) made it all the way to the Georgia Supreme Court; and the NIMBY meter goes right off the chart when constructing a facility for the [criminally insane](#).

- [SEC, FINRA Probing Dealers Over Issuers' Continuing Disclosure Compliance.](#)
- [WSJ: South Miami Charged With Defrauding Bond Investors](#) and [SEC Charges City of South Miami with Defrauding Investors About Tax-Exempt Status of Municipal Bonds](#). See also, [Reuters: Wielding Harrisburg Example, SEC Cajoles Cities Nationwide.](#)
- [In re Jerome Markowitz Trust](#), in which the Superior Court of Pennsylvania held that investment advisor's failure to inform trustee that ARS it received in transfer did not come with auction rights constituted breach of fiduciary duty; investment advisor lightly penalized as it subsequently obtained auction rights, could not have anticipated the collapse of the ARS market, and most of the loss was attributable to the subsequent actions of the trustee.
- [Health Care Authority for Baptist Health v. Davis](#), in which the Supreme Court of Alabama held that a health care authority's status as an affiliate of a state agency does not endow it with state immunity from suit.
- [In re Texas Rice Land Partners, Ltd.](#), in which the Texas Court of Appeals found that the Keystone Pipeline is a common carrier line, and thus possesses the power of eminent domain.
- [Muni Underwriting Fees Continue to Decline.](#)
- We highly recommend that you read the articles in the first two bullet points above, in order to provide clients with updated guidance regarding continuing disclosure compliance and the SEC's recent focus on municipal issuance disclosures.

- [Raymond James Financial Services, Inc. v. Phillips](#), in which the Supreme Court of Florida held that state statutes of limitations apply to securities arbitrations. This [article](#) discusses the potential implication of this decision.

- [*Woman's Hosp. Foundation v. National Public Finance Guarantee Corp.*](#), in which a Louisiana court of appeals upheld a bond insurer's contractual right to refuse to consent to subsequent bond issuances.
- [*Brecek & Young Advisors, Inc. v. Lloyds of London Syndicate 2003*](#), in which a district court agreed with insurer's relation-back argument in professional liability insurance claims, but held that insurer was collaterally estopped from making that argument as it had already defended and settled the underlying claims.
- [*IRS Official Explains Approach in Power Generation Revenue Procedure.*](#)
- [*IRS Publishes Proposed Regs on Community Health Needs Assessment Requirement for Tax-Exempt Hospitals.*](#)
- [*Rules Governing Nonprofits and Political Activity: A Brief Overview.*](#)
- [*GASB Improves Reporting for Nonexchange Financial Guarantees.*](#)
- [*FASB, IASB Issue Revamped Lease Accounting Proposal.*](#)
- [*Schwab Reverses Ban on Client Class-Action Lawsuits.*](#)
- [*Moody's: Detroit Restructuring Plan Bad for Bondholders.*](#)
- Otherwise, a pretty quiet week. Was there some kind of IRS flap that I missed? Although BCB prides itself on its tax coverage, we're not touching that one with the proverbial ten-foot musket. In a delightful piece of synchronicity, this was also the week in which Senator Udall introduced, [*"The Brewers Excise and Economic Relief \(BEER\) Act of 2013"*](#) and the The Urban Institute released a white paper entitled, [*"Addressing Violence and Disorder around Alcohol Outlets."*](#) Can't we all get along?

- [*City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.*](#), in which the Supreme Court of California held that Compassionate Use Act and Medical Marijuana Program Act do not preempt local bans on medical marijuana dispensaries.
- [*Sherman v. Development Authority of Fulton Count*](#), in which the validation of a bond transaction leasehold estate was reversed when a Georgia appeals court concluded that the trial court failed to make adequate findings of fact and conclusions of law, as required by statute when taxpayer requested findings and conclusions.
- [*Bluegrass Equine and Tourism Foundation and KHPWESLUX, LLC v. Commonwealth of Kentucky*](#), in which the court held that, although developer was in default under development agreement, state could not recover costs of relocating utilities as both parties were mistaken as to the availability of bond financing and thus the state assumed the risk that the project could still fail for lack of financing.
- [*Piccolo v. New York State Tax Appeals Tribunal*](#), in which the court held that property owner was not entitled to claim enterprise zone tax credits for payment of downtown improvement tax.
- [*CUSIP Global Services*](#) has released a report on the implementation of the legal entity identifier that is now set to happen in the financial industry, and the challenges surfacing in these efforts.
- The Bond Buyer is hosting its inaugural [*Financing Municipal Utilities Symposium*](#) on May 16-17, 2013 in Houston, TX.

- The SEC has charged the [*City of Harrisburg*](#), Pa., with securities fraud for its misleading public statements when its financial condition was deteriorating and financial information available to municipal bond investors was either incomplete or outdated.
- [*SIFMA*](#), as part of the Bank Loan Disclosure Task Force, has released a white paper regarding

voluntary secondary market disclosure about bank loans.

- [*McWilliams v. City of Long Beach*](#), in which the Supreme Court of California held that local charters or ordinances do not preclude Government Claims Act tax refund class actions; local ordinance is not a “statute” within the meaning of the Government Claims Act.
- [*Northshore Investors LLC v. City of Tacoma*](#), in which the court of appeals held that the 21-day period for appeal of a city council’s denial of a zoning petition began to run on the date of the council’s oral vote because this vote, not the subsequent notice of appeal that the city clerk mailed, was the final decision.
- GASB has approved a new [Statement](#) that provides accounting and financial reporting guidance to state and local governments that offer nonexchange financial guarantees and for governments that receive guarantees on their obligations.
- Virginia Circuit Court finds \$2.1 Billion [Virginia P3](#) Unconstitutional.

- [*Webb v. First Tennessee Brokerage, Inc.*](#), in which the court held that a purchaser of Lehman Brothers bonds was not required to arbitrate dispute with broker; cautionary tale for brokerage firm clients.
- [Wall Street Journal](#) article on an investment firm specializing in distressed municipal debt.
- IRS announces new [Exempt Organizations Workshops](#) focusing on changes to Form 990.
- [GASB’s white paper](#) articulating the differences between private sector and governmental accounting.
- [MSRB](#) discusses questionable dealer contracts and plans for new rules concerning financial advisory contracts with issuers that appear to disclaim away the dealers’ legal and regulatory obligations.
- [SEC](#) charges the city of Victorville, underwriter, and others with defrauding municipal bond investors.
- Otherwise, it was a rather strange week, characterized by inept discus throwers, inscrutable private letter rulings, the Connecticut Supreme Court’s seminal ruling that a deck is not a “building,” and the terrifying precedent created by a Tennessee court’s ruling that there exists no constitutional right to a liquor store. Your editor must now find a new rational basis for his continuing existence.

[April 23, 2013 - Issue 16](#)

- [*First Arkansas Bank & Trust, Trustee v. Gill Elrod Ragon Owen & Sherman, P.A.*](#), in which the Supreme Court of Arkansas discusses the liability of issuer’s counsel to purchasers in bond offering, finding: 1) no liability under state securities act; 2) no relationship giving rise to a duty under contract, negligence, or breach of a fiduciary duty; but 3) existence of a question of material fact as to whether liability could flow to the law firm under the fraud exception to privity set out under the attorney-malpractice statute.
- [*Hillcrest Property, LLP v. Pasco County*](#), in which the court struck down a novel eminent domain work-around in which the county would deny development permits to landowners that did not “voluntarily” convey – in fee simple and without compensation – that portion of their land that encroached into the development corridor.
- [*Barrett v. Henry*](#), in which the appeals court upheld the the traditional financing system in which bond proceeds are deposited into a working cash fund to enable the district to finance operations during the period before the property taxes levied for that purpose have been collected; legitimate

alternative to the issuance of tax anticipation warrants.

- **IRS: Affordable Care Act Provisions Phone Forum:** The IRS will be conducting a phone forum on April 30, 2013 to discuss key provisions of the Affordable Care Act that are currently in effect.

April 17, 2013 - Issue 15

You may find the following items in this issue of particular interest:

- [*Kaplan v. Shanahan*](#), in which the court affirmed an arbitration award in which the prevailing party was awarded attorneys' fees, as the parties had agreed to be bound by FINRA arbitration rules, which permit such fees.
- [*State v. McElroy*](#), in which a city ordinance restricting the volume of music emanating from an electronic device located within a motor vehicle that is being operated on a public street is not unconstitutionally overbroad or vague.
- [*Larimer County Board of Commissioners, et. al. v. Colorado Property Tax Administrator and YMCA of the Rockies*](#), in which the court held that the Board of Assessment did not apply the proper legal standards when it denied a YMCA facility both religious purpose and charitable use tax exemptions.
- The IRS has released the new [Form 14429, Tax Exempt Bonds Voluntary Closing Agreement Program Request](#).

April 10, 2013 - Issue 14

You may find the following items in this issue of particular interest:

- [*Wells Fargo Advantage Nat. Tax Fee Fund v. Helicon Associates, Inc.*](#), in which the appeals court reversed summary judgment in favor of a law firm on securities law and negligent representation allegations in connection with a bond issuance for which the firm served as underwriters' counsel.
- [*Municipality of Bremanger v. Citigroup Global Markets Inc.*](#), in which the district court declined to hold Citigroup liable for losses sustained by Norwegian municipalities that invested in a Citi fund, finding that Norwegian broker neglected to convey risk disclosures provided to it by Citi.
- [MSRB has received approval](#) from the SEC to expand disclosures related to contributions made by municipal securities dealers to bond ballot measure campaigns.
- [The Big Seven state and local government associations, and the GFOA released "Pension Funding Guide: A Guide for Local Officials"](#) to provide key facts about public pension plans and a brief overview of which issues state and local officials should address.
- [The IRS' proposed regulations \(REG-106499-12\)](#) that provide guidance to charitable hospital organizations on the community health needs assessment (CHNA) requirements and related excise tax and reporting obligations.

April 4, 2013 - Issue 13

HIGHLIGHTS

You may find the following items in this issue of particular interest:

- [*In re Blue Ridge Housing of Bakersville LLC*](#), in which a North Carolina court held that a nonprofit organization was the “owner” of low income housing development, and thus development entitled to property tax exemption, even though nonprofit had only a 0.1% legal ownership interest in the development in a case of first impression.
- [*Sherman v. Development Authority of Fulton County*](#), in which a Georgia appeals court rejected the sufficiency of the trial court’s findings of fact and conclusions of law in a bond validation proceeding, finding mere boilerplate recitations and conclusions rather than actual evidence and analysis.
- [*City of Atlanta v. City of College Park*](#), in which the Supreme Court of Georgia held that municipalities are not “local authorities” that are exempt from the imposition of occupation taxes and thus College Park could properly levy an occupation tax on Atlanta for its proprietary operations occurring within College Park.
- [SIFMA’s white paper](#) urging underwriters to disclose issuer designation of their counsel.
- [IRS’s publication](#) of population figures for housing credit and private bond purposes.

[March 13, 2013 - Issue 10](#)

You may find the following items in this issue of particular interest:

- [*Borikas, et al. v. Alameda Unified School District*](#), in which a California appeals court found that that parcel tax’s residential/commercial property classifications and differential tax burdens based on property size exceeded the school district’s taxing authority.
- [*Northglenn Urban Renewal Authority v. Gil Reyes, et al.*](#), in which a Colorado appeals court rejected a county assessor’s TIF calculation that included property in the base value while removing that same property from the newly assessed value.
- [*Borough of Paramus v. County of Bergen*](#), in which the New Jersey tax court held that leasing tax-exempt hospital property to a third-party on a for-profit basis does not affect the exempt status of the property since the hospital continues to serve the public purpose set forth by the tax statute.
- [The IRS has released a new form](#) required for a Tax Exempt Bonds Voluntary Closing Agreement Program submission request - Form 14429.
